

1982 WL 189295 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 17, 1982

*1 Mr. William L. McDowell, Jr.
Deputy Director
South Carolina Department of Archives and History
Post Office Box 11,669
Columbia, South Carolina 29211

Dear Mr. McDowell:

You have recently inquired whether the Department of Archives and History may 'define by standards and/or regulations what an acceptable microfilm recording system consists of for records of permanent value in addition to specifying the microfilm standards which shall be met for master security microfilm as set forth in § 30-1-130', Code of Laws of South Carolina (1976, as amended). You specifically ask whether the Department can 'determine by regulation and standards the size, color, format, type of paper and ink acceptable for permanent record microfilm recording?'

This office concluded in an opinion issued to the Director of the Department of Archives and History on November 20, 1981, that the Public Records Act, § 30-1-10 et seq. extends to the Archives broad authority to establish standards for the preservation, repair, rebinding, restoration and storage of 'public records.' Such standards may be promulgated pursuant to regulations as explicitly authorized by § 30-1-100, and enforced by the Department as required. See Op. at 3. The authority extended to the Archives by § 30-1-10 et seq. would include the regulation of permanent microfilm recordation.

However, this authority given by § 30-1-10 et seq., relates in its entirety to the protection, preservation, maintenance, retention, etc. of 'public records'¹ as defined by § 30-1-10. § 30-1-10 provides in pertinent part:

For the purposes of §§ 30-1-10 to 30-1-140 'public records' means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used or retained by any public agency, regardless of physical form or characteristics. Records such as income tax returns, medical records, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of §§ 30-1-10 to 30-1-140, nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public; provided, however, if necessary, security copies of closed or restricted records may be kept in the South Carolina Department of Archives and History, with the approval of the agency or political subdivision of origin and the Director of the Department of Archives and History, and provided, further, that for purposes of records management closed and restricted records may be disposed of in accordance with the provisions of §§ 30-1-10 to 30-1-140 for the disposal of public records.

It is evidence from this provision, as well as the entire Public Records Act, that until a 'public record', so defined, is created, the Archives, by virtue of this Act, generally possesses no regulatory authority, especially with respect to another public agency. Nothing in the Act would appear to alter or modify any other statutory provisions establishing standards or authority for the creation of 'public records'. As one such example, and about which you specifically have inquired, neither the Public Records Act, nor any authority extended to the Archives by it, purports to affect a provision such as § 30-5-30, which establishes prerequisites to the recordation of 'deeds or other instruments.' Provisions such as these separately establish the criteria for the creation of public records and the duties of the custodian and recorder of these records; such remain unaffected by § 30-1-10

et seq. Only after the documents or instruments take on the status of 'public records', upon their creation or recordation in their respective agency, does the Archives possess regulatory authority pursuant to § 30-1-10 et seq.

*2 I hope this serves as an adequate response to your question. With best wishes, I remain
Very truly yours,

Robert D. Cook
Assistant Attorney General

Footnotes

- 1 This statement, of course, is not intended to undermine the proviso appearing in the definition of 'public records' contained in § 30-1-10 which reads:
provided, however, if necessary, security copies of closed or restricted records may be kept in the South Carolina Department of Archives and History, with the approval of the agency or political subdivision of origin and the Director of the Department of Archives and History, (cont'd on p. 3) and provided, further, that for purposes of records management closed and restricted records may be disposed of in accordance with the provisions of §§ 30-1-10 to 30-1-140 for the disposal of public records.

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